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OFFICE OF PETITIONS

In re Application of :
Henningsen :
Application No. 09/807,394 : **ON PETITION**
Filed: April 12, 2001 :
Attorney Docket No. GRP-0001 :
For: RAPID PROTOTYPING APPARATUS
AND METHOD OF RAPID PROTOTYPING

This is a decision on the petition under 37 CFR 1.181, filed May 8, 2006 (certificate of mailing date May 5, 2006), requesting that the Office withdraw the holding of abandonment of the above-identified application. This decision will address the petition under 37 CFR 1.28(c), filed May 8, 2006 (certificate of mailing date May 5, 2006), as well.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.28(c) is **GRANTED**.

This application was held abandoned for failure to properly and timely respond to the non-final Office action, mailed May 9, 2005, which set forth an extendable three (3) month period for reply. It is noted that the May 9, 2005 non-final Office action was the second non-final Office action after an RCE was filed. Applicant filed a Notice of Appeal and a one month extension of time on July 13, 2005 (certificate of mailing date July 11, 2005). The Office contended that this application became abandoned on September 12, 2005 for failure to file a proper follow-up submission within two months of the filing of the Notice of Appeal. A Notice of Abandonment was mailed on February 22, 2006.

Petitioners assert an Appeal Brief and a five month extension of time were timely filed February 21, 2006 (certificate of mailing date February 13, 2006). The undersigned finds this assertion completely convincing as these documents are present in the application file and Office financial records shows that the required fees were charged.

The petition under 37 CFR 1.181 is **GRANTED** and the Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

Regarding the change of entity status, filed May 8, 2006 (certificate of mailing date May 5, 2006), on September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**


The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**. Office records have been changed to show that applicant is no longer a small entity.

Applicant was charged two large entity 5 month extension of time fees. Deposit account no. 06-1130 will be credited \$2,160.00.

Accordingly, the application file will be forwarded to Technology Center A.U. 1722 for consideration of the Appeal brief filed February 21, 2006 (certificate of mailing date February 13, 2006).

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.


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for Patent Examination Policy